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Paper No. 12

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OFFICE OF PETITIONS

In re Application of
Charles L. Vigue et al
Application No. 09/921,543
Filed: August 2, 2001
Attorney Docket No. NAI1P275/
01.014.01

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: DECISION ON PETITION
: UNDER 37 CFR 1.137(b)
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This is a decision on the renewed petition under 37 CFR 1.137(f), filed by facsimile transmission on July 10, 2003, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark Office (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. See 37 CFR 1.137(f).

The petition is dismissed as **MOOT**.

Petitioner states that the instant nonprovisional application became the subject of a counterpart application filed in an eighteen-month country on April 2, 5, and 8, 2002. A review of the file record discloses that a Notice to Rescind was received in the USPTO on February 15, 2002.

Where an applicant makes a nonpublication request under 35 U.S.C. 122(b)(2)(B)(i) and then rescinds (pursuant to 35 U.S.C. § 122(b)(2)(B)(ii)) the nonpublication request **before or on the date a counterpart application is filed in an eighteen-month publication country**, the nonpublication request will be treated as annulled and the application will be treated as if the nonpublication request had never been made. See Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. 122(b)(2)(B)(ii)-(iv), 1272 OG 1 (July 1, 2003), available at <http://www.uspto.gov/web/patents/patog/week26/>.

In the instant application, a notice to rescind was filed prior

to the filing date of a counterpart application in an eighteen month publication country. Therefore, since receipt in the USPTO of the request to rescind prior to the filing date of a counterpart application in an eighteen-month publication country resulted in the annulling of the nonpublication request, this application is not regarded as abandoned. As such, the filing of a petition to revive is unnecessary and is dismissed as involving a moot issue.

Since this application is not in fact abandoned, for the reason stated above, the petition fee of \$1,300 is being credited to Deposit Account No. 50-1351 as authorized.

This application is being forwarded to Technology Center AU 2132 for examination in due course.

Any inquiries concerning this decision may be directed to Wan Laymon at (703) 306-5685.



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for Patent Examination Policy